***THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ W.P.Nos. 13421, 7829, 16217 AND 16322 OF 2006

W.P. NO. 13421 OF 2006:

% Dated 27-09-2006

Municipal Corporation of Guntur

…. Petitioner

Vs.

$ Smt. B. Syamala Kumari, Junior Assistant, Municipal Corporation of Guntur and another.

…. Respondents

! Counsel for the Petitioner: Spl. Govt. Pleader and Sri B. Venkata Ratnam

^ Counsel for the Respondents: Mr. P.V. Ramana

<GIST:

> HEAD NOTE:

? Cases referred

[1] 1983(2) SLR 493
2 2001 AIR SCW 3339
3 1975 SC 2216
4 AIR 1985 SC 1416
5 1993(4) SCC 727
6 AIR 1986 SC 1173
7 AIR 1985 SC 772
8 1997(5) Scale 660
9 AIR 1995 SC 1364
10 AIR 1991 SC 772
11 AIR 1984 SC 1587
12 2005(7) SCC 567
13 AIR 1990 SC 166
14 2004(12) SCC 588
15 AIR 1966 SC 1942

[16] 2001(4) SCC 448
[17] 2002(4) SCC 578
[18] 1993(3) ALT 471 (FB)
[19] (1986) 3 SCC 103
[20] AIR 1960 SC 356
[21] (2004(7) SCC 558
[22] (1944) 2 All ER 293
[23] (1991) 4 SCC 139
[24] (1990) 3 SCC 682
[25] AIR 1965 SC 1887
[26] (2002) 4 SCC 234
[27] 2004(1) SCC 547
[28] (2004)5 SCC 568
[29] (2002)4 SCC 638

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NOS. 13421, 7829, 16217 AND 16322 OF 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P. NO. 13421 OF 2006:

Aggrieved by the interlocutory order of the A.P. Administrative Tribunal, in O.A. No. 2414 of 2006 dated 27.04.2006, whereby the petitioner was directed not to dismiss the 1st respondent-applicant from service, on the basis of the judgment of the Special Judge for SPE & ACB Cases, Vijayawada, in C.C. No. 40 of 2000 dated 04.03.2006, pending further orders, the present writ petition is filed by the Municipal Corporation of Guntur.

Brief facts, to the extent necessary, are that the 1st respondent-applicant was working as a Junior Assistant in the

Municipal Corporation, Guntur. Consequent upon a trap laid by the A.C.B, while the 1st respondent-applicant was demanding and accepting a bribe of Rs.800/- to do an official favour, a case was registered against her in C.C. No. 40 of 2000 before the Special Judge for SPE & ACB Cases, Vijayawada. The Special Judge, by order dated 04.03.2006, convicted the 1st respondent-applicant under Section 248(2) Cr.P.C. and sentenced her to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- for offences under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The 1st respondent-applicant preferred Criminal Appeal No. 390 of 2006, and this Court, by order in Crl.M.P. No. 436 of 2006 in Crl. Appeal No. 390 of 2006 dated 20.03.2006, suspended the sentence and granted her bail pending disposal of the Criminal appeal on condition of her executing a bond of Rs.10,000/- with two sureties each for a like sum to the satisfaction of the Special Judge for SPE & ACB Cases, Vijayawada. Apprehending that she may be dismissed from service, in view of the judgment rendered by the Special Judge for SPE & ACB cases, Vijayawada, in C.C. No. 40 of 2000, the 1st respondent-applicant approached the Tribunal and sought for an interim direction to the respondents not to dismiss her from service in view of the suspension of the sentence by the High Court. The 1st respondent-applicant relied on an earlier order passed by the Tribunal, in O.A. No. 2857 of 2005 dated 25.06.2005, which in turn had relied on its earlier orders and the observations of this Court in W.P. No. 10515 of 2005 dated 29.04.2005. The Tribunal held that in view of the said orders, and with a view to maintain consistency, the petitioners herein must be

directed not to dismiss the 1st respondent-applicant from service based on the judgment of the Special Judge for SPE & ACB Cases, Vijayawada, in C.C. No. 40 of 2000 dated 04.03.2006, pending further orders. The Government, in its memo No. 2935/VIG.IV.2/2001-03 dated 18.03.2006, while informing that the Special Judge for SPE & ACB Cases, Vijayawada had pronounced judgment on 04.03.2006, and had convicted and sentenced the 1st respondent-applicant to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.1,000/- and in default to suffer simple imprisonment for a period of three months, requested the 1st petitioner herein to obtain a copy of the judgment and advised them to dismiss the 1st respondent-applicant from service in view of her conviction and as per the orders of the Government in G.O.Ms. No. 2, G.A. (SER.C) Dept, dated 04.01.1999.

W.P. NO. 7829 OF 2006:

Aggrieved by the interlocutory order of the Tribunal, in O.A. No. 642 of 2005 dated 07.02.2005, suspending the proceedings of the 2nd petitioner herein, dated 28.02.2005, the present writ petition is filed.

The 1st respondent-applicant was appointed as a Tracer on 06.10.1990 in the office of the Commissioner, Bodhan Municipality. He was subsequently promoted as a Town Planning Building Overseer on 11.10.2002. While he was working in the office of the Commissioner, Bodhan Municipality, the 1st respondent-applicant was trapped by the A.C.B on 06.04.1993 and was placed under suspension on 18.10.1993. He was subsequently reinstated into duty with effect from 31.07.1999. The Principal Special Judge for

SPE & ACB Cases-cum-IV Additional Chief Judge, City Civil Court, Hyderabad, in C.C. No. 2 of 1994 dated 14.10.2004, convicted the 1st respondent-applicant under Section 248(2) Cr.P.C. Assailing the said judgment, the 1st respondent-applicant filed Crl. Appeal No. 2348 of 2004 and this Court, in Crl.M.P. No. 6547 of 2004 in Crl. Appeal No. 2348 of 2004 dated 08.11.2004, passed the following order:-

> "The petitioner shall be released on bail on the same terms and conditions that were imposed by the Court below. On such execution, the execution of sentence stands suspended."

In his proceedings dated 28.02.2005, the 2nd petitioner took note of the fact that the 1st respondent-applicant was found guilty of the charges framed against him under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and was convicted under Section 248(2) Cr.P.C. by the Principal Special Judge for SPE & ACB Cases, City Civil Court, Hyderabad. The 2nd petitioner dismissed the 1st respondent-applicant from service with immediate effect, in exercise of the powers conferred under Clause (X) of Rule 9 read with sub-rule (1) of Rule 20 of the A.P.C.S (CC & A) Rules, 1991 and as required under the proviso to Rule 9 of the A.P.C.S (CC & A) Rules, 1991, G.O.Ms. No. 568 dated 23.05.1981 and G.O.Ms. No. 255 dated 17.05.1984. Aggrieved thereby the 1st respondent-applicant filed O.A. No. 642 of 2005 before the Tribunal. The Tribunal, relying on its earlier orders in O.A. No. 2857 dated 24.06.2005 and the observations of this Court in W.P. No. 10515 of 2005 dated 29.04.2005, held that, in order to maintain consistency, the proceedings dated 28.02.2005 should be suspended pending further orders. Aggrieved thereby, the present writ petition is filed.

W.P. NO. 16217 OF 2006:

This writ petition is filed by Sri M. Yellaiah, Deputy Tehsildar, District Supply Office, Medak against the order of the Tribunal, in O.A. No. 3773 of 2005 dated 27.04.2006, whereby the order of dismissal from service was upheld by the Tribunal following the judgment of the Apex Court. The Tribunal held that, since Rule 25(1) did not contemplate any show cause notice being given, the impugned order could not be faulted for not issuing a show cause notice to the petitioner-applicant before the impugned order of dismissal was passed.

W.P.NO. 16322 OF 2006:

This writ petition is filed against the order of the Tribunal, in O.A. No. 3425 of 2006 dated 21.06.2006, whereby the Tribunal directed the petitioners herein to keep the 1st respondent-applicant out of service and continue him under suspension, pending disposal of the criminal appeal by the High Court, by paying subsistence allowance in accordance with the rules. The respondent-applicant was working as a Selection Grade Secretary in the Agricultural Market Committee, Khammam. He was trapped by the ACB, on 24.03.2000, while accepting a bribe of Rs.2,250/- and was thereafter suspended from service, vide G.O.Ms. No. 507 dated 15.05.2000, with effect from 15.05.2000. The respondent-applicant was convicted in C.C. No. 34 of 2001 by the Special Judge for SPE & ACB Cases, Hyderabad and sentenced to undergo rigorous imprisonment for a period of one year under Section 7 of the Prevention of Corruption Act and also to pay a fine of Rs.2,250/- under Section 13(1)(d) of the Prevention of Corruption Act. Aggrieved thereby the petitioner preferred an

appeal and this Court, by order in Crl.M.P. No. 814 of 2006 in Crl.A. No. 679 of 2006 dated 06.06.2006, suspended the sentence imposed on the respondent-applicant. Apprehending that he would be dismissed from service, pursuant to the order of conviction in C.C. No. 34 of 2001 dated 10.05.2006, the respondent-applicant approached the A.P. Administrative Tribunal. He relied on the judgment of the Apex Court in **State of Maharashtra Vs. Chandhrabhan**[1] and sought a declaration that the action of the respondents, in not taking steps to reinstate him into service, was improper, illegal and unjust. The Government Pleader, on the other hand, relied on the judgment of the Apex Court in **K.C. Sareen Vs. C.B.I., Chandigarh**[2] and on the government memo No. 1621/SPL.B/ 2001-1, G.A. (SPL.B) Department dated 26.11.2001. The Tribunal held that the case of the respondent-applicant was squarely covered by the judgment of the Apex Court in **Chandhrabhan**[1]. The Tribunal also took note of the fact that the Government, in its memo No. 3907/71/A2/Fr-II/99, dated 28.02.2000, in view of the judgment of the Apex Court in **Chandhrabhan**[1], had ordered that a Government servant under suspension, whether he was lodged in prison or released on bail on his conviction, pending consideration of his appeal, must be paid subsistence allowance. The Tribunal held that, since the respondent-applicant had been suspended with effect from 15.05.2000, he must be continued under suspension by paying subsistence allowance till the disposal of the criminal appeal pending before this Court. While holding that the relief claimed by the respondent-applicant, of reinstatement into service pending disposal of the criminal appeal before the High Court, could not be

granted, the Tribunal directed the petitioners herein to keep the respondent-applicant out of service and continue him under suspension pending disposal of the criminal appeal by the High Court, by paying subsistence allowance in accordance with the rules. Aggrieved thereby the respondent-applicant approached this Court filing W.P. No. 13225 of 2006. This Court, while dismissing the writ petition at the stage of admission, by order dated 03.07.2006, took note of the fact that the respondent-applicant was assailing the action of the petitioners herein in continuing him under suspension inspite of the fact that his conviction by the Special Judge for SPE and ACB Cases, Hyderabad was suspended pending criminal appeal. This Court noted that the Tribunal, taking into consideration the principles laid down by the Apex Court in **Chandhrabhan**[1], had directed continuation of the petitioner under suspension and payment of subsistence allowance in accordance with the rules and, in view of the same, it did not find any ground to interfere with the order of the Tribunal. During the pendency of proceedings before the Tribunal, the respondent-applicant was dismissed from service vide proceedings dated 20.06.2006. A copy of the order was served on the respondent-applicant on 08.07.2006, after orders were passed by the Tribunal in O.A. No. 3425 of 2006 on 21.06.2006 and by this Court, in W.P. No. 13325 of 2005, on 03.07.2006. It is stated that, aggrieved by the said order of dismissal from service, the respondent-applicant approached the Tribunal in O.A. No.1976 of 2006 which is still pending before the Tribunal.

Since common questions, as to whether a government

servant, on his conviction in a criminal case, is automatically liable to be dismissed from service, whether on the sentence being suspended in appeal he is required to be continued in service/under suspension etc arise for consideration in all these writ petitions, they were heard together and are now being disposed of by a common order.

Sri P.V. Ramana, Sri G. Vidyasagar, Sri D. Balakishan Rao and Sri Y.S. Venkat Rao, learned Counsel appearing on behalf of the government servants/delinquent employees, (applicants before the Tribunal), would emphasize that the applicants were entitled to be continued in service/under suspension as the order of sentence, imposed on them in the criminal case, has been suspended in the criminal appeal filed by them before this Court. Learned Government Pleader appearing on behalf of the Government, the Learned Special Government Pleader appearing on behalf of the Agriculture Market Committee, and Sri B. Venkatratnam, Learned Standing Counsel appearing on behalf of the Municipal Corporation, would contend that, on an employee being convicted in a criminal case, he was automatically liable to be dismissed from service and mere suspension of the sentence, pending criminal appeal, would neither entitle him to be continued in service nor to be placed under suspension.

Sri P. V. Ramana, learned Counsel, would rely on **The Divisional Personnel Officer Southern Railway Vs. T.R. Chellappan**[3], in support of his submission that a government servant could not, automatically, be dismissed from service on his conviction by a criminal Court and that the disciplinary authority, in exercise of the powers conferred under Rule 25 of the APCS

(CC&A) Rules, 1991, was required to consider all the facts and circumstances of the case and take an appropriate decision as to the punishment to be imposed in this regard. Learned Counsel would submit that a delinquent employee, as held in **T.R. Chellappan**[3], was entitled to be put on notice and given an opportunity of being heard by the competent authority before action was taken against him under Rule 25. Learned Counsel would submit that, while **T.R. Chellappan**[3] was a three Judge bench judgment, the subsequent judgment of the Apex Court in **K.C. Sareen**[2] was a judgment of a two member bench and since the judgment in **T.R. Chellappan**[3] was of a larger bench, the said judgment would prevail not withstanding a contrary view taken in **K.C. Sareen**[2]. Learned Counsel would submit that, since the Constitution bench judgment in **Union of India Vs. Tulsiram Patel**[4] has been considered by the subsequent Constitution bench of the Supreme Court in **Managing Director ECIL, Hyderabad Vs. B. Karunakar**[5], even if it were to be held that the delinquent employee was not entitled for an opportunity of being heard, nonetheless he must, atleast, be held to be entitled for an opportunity to submit his written objections to the judgment of the criminal Court, since the judgment of the criminal Court is also a material document, based on which the competent authority proposes to take action against the government servant under Rule 25 of the APCS (CC&A) Rules. Learned Counsel would rely on **Ram Chander Vs. Union of India**[6] in this regard. He would submit that, under Rule 8 (2)(b), an employee was required to be kept under suspension pending disposal of the criminal appeal

and, on a reading of the rules in their entirety, the delinquent employee ought not to be dismissed from service merely on the ground that he was convicted in a criminal case, and that he must atleast be kept under suspension, if not permitted to continue in service, pending disposal of the Criminal Appeal.

Sri G. Vidyasagar, learned Counsel, while adopting the arguments of Sri P.V. Ramana, would reiterate that mere conviction in a Criminal Case would not justify automatic dismissal from service of a government servant. Sri D. Balakishan Rao, learned Counsel for the petitioner in W.P. No. 16217 of 2006, would place reliance on the judgment of the Apex Court in **Shankar Das Vs. Union of India**[7]. Sri Y.S. Venkat Rao, learned Counsel, would submit that since the order of the Tribunal in O.A. No. 3425 of 2006 has been upheld by this Court in W.P. No. 13225 of 2006 dated 03.07.2006, it was not open to the Government and the Commissioner and Director of Marketing to challenge the very same order of the Tribunal, in O.A. No. 3425 of 2006 dated 21.06.2006, by way of W.P. No. 16322 of 2006.

Learned Government Pleader for Services, on the other hand, would submit that the Apex Court in **K.C. Sareen**[2] has held that an appellate Court should not suspend the order of conviction passed by the criminal Court in cases under the Prevention of Corruption Act and, therefore, on conviction, the Government servant was automatically required to be dismissed from service. Learned Government Pleader would rely on **Union of India Vs. Ramesh Kumar**[8] and **Dy. Director of Collegiate Education (Admn.) Vs. S. Nagoor Meera**[9]. He would submit that, in view of Clause (X) of Rule 9 of the A.P.C.S. (C.C&A) Rules, 1991, the

Government servant, on charges of corruption and misappropriation being established, was liable to be automatically dismissed from service.

Learned Special Government Pleader, appearing on behalf of the learned Advocate General, would submit that, on his conviction in a criminal case, an employee is deemed to be under suspension under Rule 8(2)(b) only till the order of dismissal is passed and that no employee was entitled to contend that he should be continued under suspension till disposal of the criminal appeal or that he should not be dismissed from service till then. Learned Special Government Pleader would submit that, the prescription under Clause (X) of Rule 9 of the A.P.C.S (C.C&A) Rules, 1991, which mandates imposition of punishment of dismissal from service on charges of corruption being established, must also be read into Rule 25 as the very purpose of making the rules is to ensure that dishonest and corrupt employees are not permitted to continue in service. Learned Special Government Pleader would submit that the judgment of the Supreme Court in **Chandrabhan**[1] has been distinguished in the subsequent judgment of the Supreme Court in **Ramesh Kumar**[8] and, therefore, reliance can no longer be placed on the earlier judgment in **Chandrabhan**[1].

Before we examine the rival contentions, it is necessary to take note of the relevant constitutional provisions and the applicable rules.

Article 311 of the Constitution of India reads as under:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-

(1) No person who is a member of a civil service of the

Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

A.P. CIVIL SERVICE (CLASSIFICATION, CONTROL AND APPEAL RULES, 1991

Rule 8 of the A.P.C.S. (C.C&A) Rules, 1991 relates to suspension.

Rule 8. Suspension:-

(1) A member of a Service may be placed under suspension from service.

(a) where a disciplinary proceedings against him is contemplated or is pending, or

(b) where in the opinion of the authority competent to place the Government servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(d) A member of a service may be placed under suspension from service even if the offence for which he was charged does not have bearing on the discharge of his official duties.

(2) A Government servant shall be deemed to have been placed under suspension by an order of the authority competent to place him under suspension-

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation:- The period of forty-eight hours referred to clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(c) the order of suspension ceases to be operative as soon as the criminal proceedings, on the basis of which the Government servant was arrested and released on bail, are terminated.

(3) where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on revision or review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal, or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void, in consequence of or by a decision of a court of law and the authority competent to impose the penalty, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement

was originally imposed, the Government servant shall be deemed to have been placed under suspension by the authority competent to impose the suspension from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority which made or is deemed to have made the order or by an authority to which that authority is subordinate.

(b) Where a Government servant is suspended or deemed to have been suspended, whether in connection with any disciplinary proceeding or otherwise, and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, direct that the government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may, at any time, be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Rule 9 prescribes the penalties which may be imposed on a government servant.

Rule 9. Penalties:- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely-

Minor Penalties:

(i) censure;

(ii) withholding of promotion;

(iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the State Government or the Central Government or to a local authority or to a corporation owned or controlled by the State or the Central Government, by negligence or breach of orders, while working in any department of the State or the Central

Government, Local authority or Corporation concerned.

(iv) Withholding of increments of pay without cumulative effect;

(v) Suspension, where a person has already been suspended under Rule 8 to the extent considered necessary;

Major Penalties:

(vi) withholding of increments of pay with cumulative effect.

(vii) reduction to a lower rank in the seniority list or to a lower stage in the time scale of pay or to a lower time scale of pay not being lower than that to which he was directly recruited or to lower grade or post not being lower than that to which he was directly recruited, whether in the same service or in another Service, State or Subordinate;

(viii) compulsory retirement;

(ix) removal from service which shall not be a disqualification for future employment under the Government;

(x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;

Provided that, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (ix) or clause (x) shall be imposed.

Provided further that in any exceptional case and for special reasons to be recorded in writing, any other penalty may be imposed.

The procedure for imposing major penalties under clauses (vi) to (x) of Rule 9 is prescribed in Rule 20. Sub-rule (1) thereof reads as under:

Rule 20. Procedure for imposing major penalties:-

(1) No order imposing any of the penalties specified in clause (vi) to (x) of Rule 9 shall be made except after an enquiry held, as far as may be in the manner provided in this rule and Rule 21 or in the manner provided by the Public Servants (Inquiries) Act, 1850 (Central Act 37of 1850) or the Adhra Pradesh Civil Services (Disciplinary Proceedings Tribunal)

Act, 1960 or the Andhra Pradesh Lokayukta and Upa-Lokayukta Act, 1983, where such inquiry is held under the said Acts.

Rule 20(1) prohibits imposition of the penalties specified in clauses (vi) to (x) of rule 9 except after an enquiry is held in the manner specified in Rules 20 and 21. The action to be taken on receipt of the report, pursuant to the enquiry held under Rule 20, is prescribed in Rule 21.

Rule 21. Action on the inquiry report:-

(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 20 as far as may be.

(2) The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not be inquiring authority to the Government Servant who shall be required to submit, if he/she so desires, his/her written representation or submission to the disciplinary authority within a reasonable time ordinarily not exceeding one month. It shall not be necessary to give the Government Servant opportunity of making representation on the penalty proposed to be imposed.

(i) Provided that, where the disciplinary authority disagrees with the whole or any part of the findings of the inquiring authority, the point or points of disagreement together with a brief statement of the grounds therefore shall be communicated along with the report of the inquiry.

(ii) Provided further that in every case where it is necessary to consult the Commission the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for is advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government Servant.

While Article 311(2) of the Constitution of India prohibits dismissal, removal or reduction in the rank of a government servant, except upon an inquiry in which he is informed of the charges and is given a reasonable opportunity of being heard, clauses (a) to (c) of the second proviso to Article 311(2) carve out certain exceptions. Under clause (a) of the second proviso, the conditions prescribed in Article 311(2) shall not apply where a person is dismissed or removed or reduced in rank on the ground of the conduct which has led to his conviction on a criminal charge. The provisions of the second proviso to Article 311(2), in substantially the same language, are reproduced in Rule 25 of the A.P.C.S (C.C.&A) Rules, 1991.

Rule 25. Special procedure in certain cases:- Notwithstanding anything contained in Rule 20 to Rule 24 –

(i) where penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these Rules.

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

Provided further that no such consultation with the Commission is necessary before any orders are made under clause (i) of this rule.

CONVICTION IN A CRIMINAL CASE-DELINQUENT EMPLOYEE HAS NO RIGHT TO CONTINUE IN SERVICE/UNDER SUSPENSION PENDING CRIMINAL APPEAL

On a criminal appeal being filed, against the conviction and sentence imposed by the criminal Court, normally, the sentence is

suspended and the government servant is enlarged on bail. Ordinarily, the order of conviction is not suspended. In fact, the Supreme Court, on more than one occasion, has cautioned against the order of conviction being suspended by the appellate Court.

In **K.C. Sareen**[2], the Supreme Court observed:-

"……. THE legal position, therefore, is this : Though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389 (l) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that, we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose such appeal could be heard soon after the filing of the appeal. **But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is a different matter……."(emphasis supplied)**

In **Ramesh Kumar**[8], it was held:-

"……A bare reading of Rule 19 shows that the Disciplinary Authority is empowered to take action against a Govt. servant on the ground of misconduct which has led to his conviction on a criminal charge. The rules, however, do not provide that on suspension of execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed Govt. servant has to be treated under suspension till disposal of appeal by the appellate Court. The rules also do not provide the Disciplinary Authority to await disposal of the appeal by the Appellate Court filed by a Govt. servant for taking action against him on the ground of misconduct which has led to his conviction by a competent Court of law. Having regard to the provisions of the rules, the order dismissing the respondent from service on the ground of misconduct leading to his conviction by a competent Court of law has not lost its sting merely because a criminal appeal was filed by the respondent against his conviction and the Appellate Court has suspended the execution of sentence and enlarged the respondent on bail. This matter may be

examined from another angle. Under Section 389 of the Code of Criminal Procedure, the appellate Court has power to suspend the execution of sentence and to release an accused on bail. When the appellate Court suspends the execution of sentence, and grants bail to an accused the effect of the order is that sentence based on conviction is for the time being postponed, or kept in abeyance during the pendency of the appeal. **In other words, by suspension of execution of sentence under Section 389 Cr. P. C. an accused avoids undergoing sentence pending criminal appeal. However, the conviction continues and is not obliterated and if the conviction is not obliterated, any action taken against a Govt. servant on a misconduct which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. …..(emphasis supplied)**

Again in **S. Nagoor Meera**[9], the Supreme Court held:-

"……THIS clause, it is relevant to notice, speaks of "conduct which has led his conviction on a criminal charge. " It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and/or the accused is released on bail, the conviction does not cease to be operative. Section 389 of the Code of Criminal procedure, 1973 empowers the appellate court to order that pending the appeal " the execution of the sentence or order appealed against be suspended and also if he is in confinement that he be released on bail or on his own bond. " Section 389 (1), it may be noted, speaks of suspending" the execution of the sentence or order," it does not expressly speak of suspension of conviction. Even so, it may be possible to say that in certain situations, the appellate court may also have the power to suspend the conviction……"

The A.P.C.S (C.C&A) Rules, 1991 do not require the Disciplinary Authority to wait till the Criminal Appeal is disposed of before action can be taken against the government servant for the conduct which has led to his conviction on a criminal charge. It is always open for him to exercise his discretion under clause (a) of the second proviso to Article 311(2) read with Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991 fairly, justly and reasonably and impose any punishment, including the punishment of dismissal/removal/reduction in rank on the government servant.

As held in **S. Nagoor Meera**[9]:-

……WE need not, however, concern ourselves any more with

the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311 (2) is the "conduct which has led to his conviction on a criminal charge" and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending the appeal.

THE Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of action under clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311 (2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. **The other course suggested, viz. , to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court……" (emphasis supplied).**

It is, however, contended that, under Rule 8 of the A.P.C.S (C.C&A) Rules, 1991, such employees should only be placed under suspension pending criminal appeal and that they should not be imposed any punishment. In support of this contention reliance is placed on **Chandrabhan**[1]. Rule 8(1) enables the competent authority to place a member of the service under suspension in situations arising under clauses (a) to (d) thereunder. Sub-Rule (2) of Rule 8 is a deeming provision and, by statutory fiction, an employee is deemed to be under suspension in the contingencies mentioned in clauses (a) to (c) thereunder. Under clause (b) of Rule 8(2), a government servant is deemed to have been placed under suspension with effect from the date of his conviction. As such, immediately on his conviction in a criminal case, and

provided that, the sentence is for a term of imprisonment exceeding 48 hours, a government servant is deemed to have been placed under suspension. Explanation thereunder prescribes the manner in which the period of 48 hours, specified in clause (b), is to be computed. While the suspension of a government servant, on his conviction in a criminal case, comes into operation, by statutory fiction, from the date of his conviction, it remains in force only till he is imposed the punishment under the second proviso to Article 311(2) and Rule 25(i) of the A.P.C.S. (C.C&A) Rules, 1991. Rule 8(2)(b) provides that the government servant shall be deemed to have been placed under suspension if he is not forthwith dismissed/removed/compulsorily retired from service consequent upon such conviction. Clause (b) of Rule 8(2) does not fetter exercise of discretion by the Disciplinary Authority under Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991. It is always open to the Disciplinary Authority, to exercise his discretion under Rule 25(i) and impose any penalty, including that of dismissal/removal/compulsory retirement from service on the government servant, in which event, the order of suspension, which, by statutory fiction, had come into effect from the date of his conviction, would cease to remain in force.

Reliance placed on behalf of the government servants/delinquent employees on **Chandrabhan**[1] is misplaced. The validity of the rule, which required payment of subsistence allowance of Rs.1/- per month to a government servant on his conviction and sentence in a criminal case, pending appeal, was in issue before the Supreme Court and it is in this context that it was held:-

> ".....The second proviso to Rule 151(1)(*ii*)(*b*) of the Bombay Civil

Services Rules is void as it offends Articles 14, 16 and 21 of the Constitution. The proviso provides for payment of subsistence allowance at the rate of Re 1 per month to a government servant, who is convicted by a competent court and sentenced to imprisonment and whose appeal against the conviction and sentence is pending. The award of subsistence allowance at the rate of Re 1 per month can only be characterised as ludicrous. It is mockery to say that subsistence allowance is awarded and to award Re 1 per month……"

"…….Any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment, is violative of Article 311(2) of the Constitution as has been held by this court in the above decision. Similarly, any criminal trial of a civil servant under suspension without payment of the normal subsistence allowance payable to him under the rule would be violative of that Article. Payment of subsistence allowance at the normal rate pending the appeal filed against the conviction of a civil servant under suspension is a step that makes the right of appeal fruitful and it is therefore obligatory. Reduction of the normal subsistence allowance to the nominal sum of Re 1 per month on conviction of a civil servant under suspension in a criminal case pending his appeal filed against that conviction, whether the civil servant is on bail or has been lodged in prison on conviction pending consideration of his appeal, is an action which stultifies the right of appeal and is consequently unfair and unconstitutional. Just as it would be impossible for a civil servant under suspension who has no other means of subsistence to defend himself effectively in the trial court without the normal subsistence allowance — there is nothing on record in these cases to show that the civil servants concerned in these cases have any other means of subsistence — it would be impossible for such civil servant under suspension to prosecute his appeal against his conviction fruitfully without payment of the normal subsistence allowance pending his appeal……"

The judgment of the Supreme Court, in **Chandrabhan**[1], cannot be read as necessitating a government servant to be continued under suspension pending criminal appeal or as precluding the Disciplinary Authority from exercising his discretion under the second proviso to Article 311(2) of the Constitution of India or under Rule 25(i) of the A.P.C.S.(C.C&A) Rules, 1991 to terminate the services of the government servant. The judgment of the Supreme Court in **Chandrabhan**[1] was distinguished in **Shri Ramesh Kumar**[8], wherein the Supreme Court observed:

"…….Such being the position of law, the Administrative Tribunal fell in

error in holding that by suspension of execution of sentence by the appellate Court, the order of dismissal passed against the respondent was liable to be quashed and the respondent is to be treated under suspension till the disposal of Criminal Appeal by the High Court……."

……..BEFORE we part with this case, we would like to refer the decision of this Court in the case of **State of Maharashtra v. Chandrabhan, AIR 1983 SC 803**, and two administrative orders heavily relied upon by the Administrative Tribunal in allowing the application of the respondent. **In the case of Chandrabhan (supra) the validity of second proviso to Rule 151 of the Bombay Civil Service Rules which provided for payment of subsistence allowance at the rate of Re. 1 per month to a Govt. servant who is convicted by a competent Court of law and sentenced to imprisonment and whose appeal against the conviction and sentence is pending, was challenged and struck down by this Court. The question involved in the said case was entirely different than the question which was to be resolved by the Tribunal.** We are, therefore, of the opinion that reliance of this decision of the Supreme Court was totally misplaced. The Tribunal further relied upon two administrative orders passed by the Delhi Administration whereby two employees of the Delhi Administration were reinstated after the High Court suspended the execution of their sentences in appeals filed by them. Assuming that the facts of those cases and the present case are alike, reliance of such orders was totally misplaced for the reason being that those orders passed were not in conformity with law……." (emphasis supplied) (**Shri Ramesh Kumar**[8])

Suspension of the sentence imposed by the criminal Court, in the Criminal Appeal preferred against the criminal Court judgment, neither necessitates the government servant being continued under suspension nor does it preclude the Disciplinary Authority from exercising his discretion under clause (a) of the second proviso to Article 311(2) or Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991 to impose any penalty which he deems fit, including that of dismissal from service.

CONVICTION IN A CRIMINAL CASE: DOES NOT AUTOMATICALLY RESULT IN DISMISSAL/REMOVAL OR COMPULSORY RETIREMENT FROM SERVICE:

It is necessary to note that, while Article 311(2) of the Constitution of India requires an enquiry to be held in which the

delinquent employee must be informed of the charges and given a reasonable opportunity of being heard in respect of those charges before the penalty of dismissal or removal or reduction in rank can be imposed, the second proviso thereunder is the exclusionary clause. In the contingencies specified in clauses (a) to (c) thereunder, the conditions prescribed in Article 311(2) has no application. In cases where the delinquent government servant is dismissed, or removed or reduced in rank, on the ground of the conduct which has led to his conviction on a criminal charge, the requirement of framing charges against him, holding an enquiry and giving him reasonable opportunity of being beard in respect of those charges in the enquiry, does not apply. It is therefore not necessary that imposition of the penalty, of dismissal or removal or reduction in rank, on the ground of the conduct which has led to the conviction of the delinquent employee on a criminal charge, should be preceded by issuance of a charge sheet or a departmental enquiry being held to inquire into those charges.

Neither clause (a) of the second proviso to Article 311(2) nor Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991 mandate imposition of the penalty of dismissal in every case where a government servant is convicted on a criminal charge. It only stipulates that if any penalty under Rule 25(i), and the penalty of dismissal or removal or reduction in rank under the second proviso to Article 311(2), is to be imposed, on grounds of conduct which has led to the conviction of the government servant on a criminal charge, the requirement of holding an enquiry, framing charges and giving him a reasonable opportunity in the enquiry to meet those charges, need not be complied with. Clause(a) of the second proviso to Article 311(2) relates to the **"conduct"** which has led to the

conviction on a criminal charge and not the conviction itself. Action under clause(a) of the second proviso to Article 311(2) is to be taken only when the **"conduct"**, which has led to the conviction of the government servant, is such that it deserves any of the three major punishments mentioned in Article 311(2). The emphasis is on the words **"conduct which has led to the conviction on a criminal charge"** and not merely the conviction. For instance, a government servant may well be convicted for a traffic offence. Can it be said that, since he has been convicted on such a criminal charge, he should automatically be dismissed from service? The answer thereto has necessarily to be in the negative. In **Shankar Dass**[7], the Supreme Court observed:-

"……..Clause (*a*) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". **But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (*a*) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly**……"(emphasis supplied)

In **S. Nagoor Meera**[9], the Supreme Court held:-

"……It should be remembered that the action under clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2). As held by this court in Shankardass v. Union of India (1985) 2 SCR 358"clause (a) of the second proviso to Article 311 (2) of the constitution confers on the government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge. " But that power like every other power has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking

his scooter in a no-parking area should be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly…….. " (emphasis supplied)

As noted above, in cases where a penalty is imposed on a government servant on the ground of the conduct which has led to his conviction on a criminal charge, the disciplinary authority, under Rule 25(i) of the A.P.C.S. (C.C&A) Rules, 1991 may consider the circumstances of the case and make such orders thereon as it deems fit. It is, therefore, for the disciplinary authority to consider all the relevant facts and circumstances in relation to the conduct which led to the delinquent employee's conviction on a criminal charge and, thereafter, pass such orders as it deems fit. The power conferred under Rule 25(i) has to be exercised fairly, justly and reasonably (**S. Nagoor Meera**[9]) and, while considering the matter, the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features, if any, present in the case. (**T.R. Chellappan**[3]) Where the Disciplinary Authority come to know that a government servant has been convicted on a criminal charge, it must consider whether the conduct which has led to his conviction was such as to warrant imposition of a penalty and, if so, what is the penalty which should be imposed. For this purpose the disciplinary authority will have to peruse the judgment of the criminal Court, take into account all the circumstances of the case and the various factors set out in **T.R.**

Chellappan[3]. (**Tulsiram Patel[4]**). The factors, which the Disciplinary Authority may have to take into consideration, cannot be enumerated. The aforesaid factors are, but, instances and are merely illustrative and not exhaustive.

Under the 1st proviso to Rule 9, of the A.P.C.S (C.C&A) Rules, 1991, in every case in which the charge of acceptance from any person of any gratification, other than the legal remuneration, as a motive or reward for providing or forbearing to provide any official acts, is established the penalty of removal or dismissal is required to be imposed. Under Rule 20(1) all major penalties, including the punishment of removal or dismissal under Rule 9, can only be imposed after an enquiry is held. The first proviso to Rule 9 was substituted by G.O.Ms. No. 205 dated 05.06.1998. The very fact that such a proviso was inserted in Rule 9, and not in Rule 25, can only mean that the discretion conferred on the disciplinary authority under Rule 25(i), to consider the facts and circumstances of the case and make such orders thereon as it deems fit, is not circumscribed by the limitation prescribed under the first proviso to Rule 9. Since reliance in this regard has been placed on the judgment of the Supreme Court in **K.C. Sareen[2]** and the government memo dated 26.11.2001, it is necessary to refer to the relevant portions thereof.

In **K.C. Sareen[2]**, the Supreme Court observed:-

"…….CORRUPTION by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functioning of the public offices, through strong legislative, executive as well as judicial exercises the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic polity. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions.

When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction it is public interest which suffers and sometimes even irreparably. When 'a public servant who is convicted of corruption is allowed to continue to hold public office it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold any public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction.

THE above policy can be acknowledged as necessary for the efficacy and proper functioning of public offices. If so, the legal position can be laid down that when conviction is on a corruption charge against a public servant the appellate Court or the revisional Court should not suspend the order of conviction during the pendency of the appeal even if the sentence of imprisonment is suspended. **It would be a sublime public policy that the convicted public servant is kept under disability of the conviction in spite of keeping the sentence of imprisonment in abeyance till the disposal of the appeal or revision…..(emphasis supplied)**

Consequent to the judgment of the Supreme Court in **K.C. Sareen**[2], the Government issued the memo dated 26.11.2001 directing that action be taken forthwith to dismiss the government servant convicted of corruption and criminal misconduct. The Government Memo dated 26.11.2001, to the extent relevant, reads thus:-

GOVERNMENT OF ANDHRA PRADESH
GENERAL ADMINISTRATION (SPL.B) DEPARTMENT

MEMO NO. 1621/SPL/2001-1. DATE 26.11.2001

Sub: Public Servants-Dismissal of accused officers from service immediately on conviction even if the appeal filed by him is pending before the Appellate Court – Government Servants convicted are not eligible to be in Service till they are honourably acquitted by the Appellate Court – Instructions – Issued.

…

……..In the light of the above categorical direction of the Supreme Court, Government hereby instructs that to take action forthwith for dismissal of public servants convicted of corruption and criminal misconduct immediately upon such conviction without waiting for any appeal/and that the appointing disciplinary authorities will be personally held responsible for non implementation of these instructions and that they will be liable for disciplinary action. If in spite of these instructions it is found convicted officers continuing in service without being dismissed immediately or continue to receive provision pension if they have already retired in the meantime without action to withhold pension and other pensionary benefits or withdraw pension entirely as the case may be disregarding these instructions. It is also directed that salary/pension/provisional pension paid after the judgment convicting the accused public servant shall be liable to be recovered from the appointing authority. Consultation with Andhra Pradesh Public Service Commission in such cases has also been dispensed with.

All Departments of Secretariat and Head of Departments are requested to oppose any application for the suspension of conviction in such cases quoting the above judgment of the Supreme Court.

All Departments of secretariat and Heads of Departments are requested to follow the above instructions scrupulously and also to communicate the above instructions to the public enterprises, autonomous bodies and other instructions receiving grant in aid etc. Under their administrative control.

P.V. Rao.
Chief Secretary to Government.

In **K.C. Sareen**[2], a criminal Appeal was filed before the Apex Court. The appellant, a public servant, was convicted and sentenced for charges of corruption. Against his conviction, the appellant had preferred an appeal to the High Court. While the High Court suspended the sentence during the pendency of the appeal, the public servant wanted his conviction also to be suspended in order to avert the fall out of the conviction. As the High Court declined to oblige, he approached the Supreme Court,

by special leave, challenging the order of the High Court dismissing his petition seeking suspension of his conviction. It is in this context that the aforesaid observations of the Supreme Court were made. Neither the second proviso to Article 311(2) of the Constitution of India nor any provision similar to Section 25(i) of the A.P.C.S. (C.C&A) Rules, 1991 arose for consideration in the said case.

Following the judgment of the Apex Court in **K.C. Sareen**[2], the government issued executive instructions in its memo dated 26.11.2001. While executive instructions can supplement Rules, made under the proviso to Article 309 of the Constitution of India, and fill up areas in which the rules are silent, (**State of M.P. Vs. G.S. Dall and Flour Mills**[10]; **Union of India Vs. H.R. Patankar**[11]), they cannot, however, override the rules occupying the field. (**Dilip Kumar Ghosh Vs. Chairman**[12]). If there is a conflict between the executive instructions and the rules made under the proviso to Article 309 of the Constitution of India, the rules would prevail over such executive instructions. (**Paluru Ramakrishnaiah: R D Degaonkar Vs. Union of India**[13]; **Virender Singh Hooda Vs. State of Haryana**[14]). If there is a statutory rule in the matter, the executive must abide by that rule and it cannot, in exercise of the executive power under Article 162 of the Constitution of India, ignore or conflict that rule. (**B.N. Nagarajan Vs. State of Mysore**[15]).

It is also well settled that all subsequent judgments of smaller benches of the Supreme Court are to be read and understood in

the light of the law laid down by the Constitution bench of the Supreme Court. A decision of the Constitution bench of the Supreme Court binds a bench of lesser strength which ought not to take a view in departure or in conflict therefrom. (**Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha**[16]; **P. Ramachandrarao Vs. State of Karnataka**[17]) . When a smaller bench of the Supreme Court lays down a proposition, contrary to and without noticing the ratio decidendi of the earlier larger bench, it cannot be said that such a decision of the smaller bench becomes the law declared by the Supreme Court so as to have a binding effect under Article 141 of the Constitution of India on all Courts within the Country. (**Sakinala Hari Nath Vs. State of A.P**.[18]). Since the Constitution bench of the Supreme Court, in **Tulsiram Patel**[4], while affirming **T.R. Chellappan**[3], on the factors required to be considered by the Disciplinary Authority while determining the penalty to be imposed on a government servant, on the conduct which led his conviction on a criminal charge, has held that the Disciplinary Authority is required to take a decision thereupon as he deems fit, neither the judgment of the Supreme Court in **K.C. Sareen**[2] nor the government memo dated 26.11.2001, can be so read as to have placed fetters on the exercise of discretion, by the Disciplinary authority, under Section 25(i) of the A.P.C.S (C.C&A) Rules 1991.

We may not be understood to have held that the Disciplinary Authority, even in cases where a delinquent employee is convicted for offences of corruption or such similar conduct, must not impose the punishment of dismissal from service. All

that we have held is that these are matters which the Disciplinary Authority is required to consider, along with several other factors, and take an appropriate decision on the nature and extent of penalty to be imposed. The guidelines laid down in the government memo dated 26.11.2001, following the judgment of the Apex Court in **K.C. Sareen**[2], would certainly be among the factors, nay a very important factor, which the Disciplinary Authority is bound to take into consideration while exercising its discretion under Section 25(i) of the A.P.C.S (C.C&A) Rules 1991. The power conferred on the disciplinary authority, under the second proviso to Article 311(2) and Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991, like every other power must be exercised fairly, justly and reasonably (**Shankar Dass**[7]).

EXERCISE OF DISCRETION BY THE DISCIPLINARY AUTHORITY UNDER THE SECOND PROVISO TO ARTICLE 311(2) OF THE CONSTITUTION OF INDIA OR RULE 25(i) OF THE A.P.C.S (C.C&A) RULES, 1991 – DELINQUENT GOVERNMENT SERVANT NOT ENTITLED TO AN OPPORTUNITY OF BEING HEARD.

Placing reliance on the judgments of the Supreme Court in **T.R. Chellappan**[3], **Ram Chander v. Union of India**[19] and **B. Karunakar**[5], it is contended that, before passing an order under Section 25(i) of the A.P.C.S. (C.C&A) Rules, 1991, the delinquent employee/ government servant is entitled to an opportunity of being heard. Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules 1968, which arose for consideration in **T.R. Chellappan**[3], is in para materia with Rule 25(i) of the A.P.C.S. (C.C&A) Rules, 1991 and reads thus:

> (i) Where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a

criminal charge, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit".

The Apex Court, in **T.R. Chellappan**[3], observed:

"……. It appears to us that proviso (*a*) to Article 311(2) is merely an enabling provision and it does not enjoin or confer a mandatory duty on the disciplinary authority to pass an order of dismissal, removal or reduction in rank the moment an employee is convicted. This matter is left completely to the discretion of the disciplinary authority and the only reservation made is that departmental inquiry contemplated by this provision as also by the Departmental Rules is dispensed with. In these circumstances, therefore, we think that Rule 14(*i*) of the Rules of 1968 only incorporates the principles, enshrined in proviso (*a*) to Article 311(2) of the Constitution. The words "where any penalty is imposed" in Rule 14(*i*) should actually be read as "where any penalty is imposable", because so far as the disciplinary authority is concerned it cannot impose a sentence. It could only impose a penalty on the basis of the conviction and sentence passed against the delinquent employee by a competent court. Furthermore the rule empowering the disciplinary authority to consider circumstances of the case and make such orders as it deems fit clearly indicates that it is open to the disciplinary authority to impose any penalty as it likes. In this sense, therefore, the word "penalty" used in Rule 14(*i*) of the Rules of 1968 is relatable to the penalties to be imposed under the Rules rather than a penalty given by a criminal court.

"……..We now come to the third point that is involved in this case, namely, the extent and ambit of the last part of Rule 14 of the Rules of 1968. The concerned portion runs thus:

> "... the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

In this connection it was contended by the learned counsel for the appellants that this provision does not contemplate a full-dress or a fresh inquiry after hearing the accused but only requires the disciplinary authority to impose a suitable penalty once it is proved that the delinquent employee has been convicted on a criminal charge. The Rajasthan High Court in Civil Writ Petition No. 352 of 1971 concerning Civil Appeal No. 891 of 1975 has given a very wide connotation to the word "consider" as appearing in Rule 14 and has held that the word "consider" is wide enough to require the disciplinary authority to hold a detailed determination of the matter. We feel that we are not in a position to go to the extreme limit to which the Rajasthan High Court has gone. The word "consider" has been used in contradistinction to the word "determine". The rule-making authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. **The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent**

employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to order a fresh departmental inquiry which is dispensed with under Rule 14 of the Rules of 1968 which incorporates the principle contained in Article 311(2) proviso (*a*). This provision confers power on the disciplinary authority to decide whether in the facts and circumstances of a particular case what penalty, if at all, should be imposed on the delinquent employee. **It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features if any present in the case and so on and so forth.** It may be that the conviction of an accused may be for a trivial offence as in the case of the respondent T.R. Chellappan in Civil Appeal No. 1664 of 1974 where a stern warning or a fine would have been sufficient to meet the exigencies of service. It is possible that the delinquent employee may be found guilty of some technical offence, for instance, violation of the transport rules or the rules under the Motor Vehicles Act and so on, where no major penalty may be attracted. **It is difficult to lay down any hard and fast rules as to the factors which the disciplinary authority would have to consider, but I have mentioned some of these factors by way of instances which are merely illustrative and not exhaustive. In other words, the position is that the conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee and in the course of the inquiry if the authority is of the opinion that the offence is too trivial or of a technical nature it may refuse to impose any penalty in spite of the conviction.** This is a very salutary provision which has been enshrined in these Rules and one of the purposes for conferring this power is that in cases where the disciplinary authority is satisfied that the delinquent employee is a youthful offender who is not convicted of any serious offence and shows poignant penitence or real repentance he may be dealt with as lightly as possible. This appears to us to be the scope and ambit of this provision. **We must, however, hasten to add that we should not be understood as laying down that the last part of Rule 14 of the Rules of 1968 contains a licence to employees convicted of serious offences to insist on reinstatement. The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fairplay. The disciplinary**

authority has the undoubted power after hearing the delinquent employee and considering the circumstances of the case to inflict any major penalty on the delinquent employee without any further departmental inquiry if the authority is of the opinion that the employee has been guilty of a serious offence involving moral turpitude and, therefore, it is not desirable or conducive in the interests of administration to retain such a person in service…….(emphasis supplied)

In **Chellappan**[3] the Supreme Court, while interpreting the words "consider" in Rule 14(1), held that a summary enquiry must be held by the Disciplinary Authority, wherein the delinquent employee should be given a reasonable opportunity of being heard.

Rule 19, of the Central Civil Services (Classification Control and Appeal Rules), which is in pari materia with Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968 and Rule 25 of the A.P.C.S. (C.C&A) Rules, 1991, reads as under:-

Notwithstanding anything contained in Rule 14 to Rule 18

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

The Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under Clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

The scope of clause(a) of the second proviso to Article 311(2) of the Constitution of India, Rule 19 of the CCS(CCA) Rules, 1991 and the earlier judgment in **Challappan**[3], fell for

consideration in **Tulsiram Patel**[4] and the Constitution bench observed:-

"……So far as *Challappan case*[1] is concerned, it is not possible to find any fault either with the view that neither clause (*a*) of the second proviso to Article 311(2) nor clause (*i*) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case. In order to arrive at a decision as to which penalty should be imposed, the disciplinary authority will have to take into consideration the various factors set out in *Challappan case*[1]. It is, however, not possible to agree with the approach adopted in *Challappan case*[1] in considering Rule 14 of the Railway Servants Rules in isolation and apart from the second proviso to Article 311(2), nor with the interpretation placed by it upon the word "consider" in the last part of Rule 14. Neither Rule 14 of the Railway Servants Rules nor a similar rule in other service rules can be looked at apart from the second proviso to Article 311(2). The authority of a particular officer to act as a disciplinary authority and to impose a penalty upon a government servant is derived from rules made under the proviso to Article 309 or under an Act referable to that article. As pointed out earlier, these rules cannot impinge upon the pleasure of the President or the Governor of a State, as the case may be, because they are subject to Article 310(1). Equally, they cannot restrict the safeguards provided by clauses (1) and (2) of Article 311 as such a restriction would be in violation of the provisions of those clauses. In the same way, they cannot restrict the exclusionary impact of the second proviso to Article 311(2) because that would be to impose a restriction upon the exercise of pleasure under Article 310(1) which has become free of the restrictions placed upon it by clause (2) of Article 311 by reason of the operation of the second proviso to that clause. **The only cases in which a government servant can be dismissed, removed or reduced in rank by way of punishment without holding an inquiry contemplated by clause (2) of Article 311 are the three cases mentioned in the second proviso to that clause. A rule which provides for any other case in which any of these three penalties can be imposed would be unconstitutional. Service rules may reproduce the provisions of the second proviso authorizing the disciplinary authority to dispense with the inquiry contemplated by clause (2) of Article 311 in the three cases mentioned in the second proviso to that clause or any one or more of them. Such a rule, however, cannot be valid and constitutional without reference to the**

second proviso to Article 311 (2) and cannot be read apart from it. Thus, while the source of authority of a particular officer to act as a disciplinary authority and to dispense with the inquiry is derived from the service rules, the source of his power to dispense with the inquiry is derived from the second proviso to Article 311(2) and not from any service rules. There is a well-established distinction between the source of authority to exercise a power and the source of such power. The Court in *Challappan case*[1] was, therefore, in error in interpreting Rule 14 of the Railway Servants Rules by itself and not in conjunction with the second proviso (at that time the only proviso) to Article 311(2). **It appears that in *Challappan case*[1] the Court felt that the addition of the words "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" warranted an interpretation of Rule 14 different from that to be placed upon the second proviso. This is also not correct. It is true that the second proviso does not contain these words but from this it does not follow that when acting under the second proviso, the disciplinary authority should not consider the facts and circumstances of the case or make an order not warranted by them. It is also not possible to accept the interpretation placed upon the word "consider" in *Challappan case*[1]. According to the view taken in that case, a consideration of the circumstances of the case cannot be unilateral but must be after hearing the delinquent government servant. If such were the correct meaning of the word "consider", it would render this part of Rule 14 unconstitutional as restricting the full exclusionary operation of the second proviso.** The word "consider", however, does not bear the meaning placed upon it in *Challappan case*[1]. The word "consider" is used in Rule 14 as a transitive verb. The meaning of the word "consider" as so used is given in the *Oxford English Dictionary* as "To contemplate mentally, fix the mind upon; to think over, meditate or reflect on, bestow attentive thought upon, give heed to, take note of". The relevant definition of the word "consider" given in *Webster's Third New International Dictionary* is "to reflect on: think about with a degree of care or caution". Below this definition are given the synonyms of the word "consider" these synonyms being "contemplate, study, weigh, revolve, excogitate". While explaining the exact different shades of meaning in this group of words, *Webster's Dictionary* proceeds to state as under with respect to the word 'consider':

> " 'Consider' often indicates little more than think about. It may occasionally suggest somewhat more conscious direction of thought, somewhat greater depth and scope, and somewhat greater purposefulness."

It is thus obvious that the word "consider" in its ordinary and natural sense is not capable of the meaning assigned to it in *Challappan case*[1]. The consideration under Rule 14 of what penalty should be imposed upon a delinquent railway servant must, therefore, be ex parte and where the disciplinary authority comes to the conclusion that the penalty which the facts and circumstances of the case warrant is either

of dismissal or removal or reduction in rank, no opportunity of showing cause against such penalty proposed to be imposed upon him can be afforded to the delinquent government servant. Undoubtedly, the disciplinary authority must have regard to all the facts and circumstances of the case as set out in *Challappan case*[1]. As pointed out earlier, considerations of fair play and justice requiring a hearing to be given to a government servant with respect to the penalty proposed to be imposed upon him do not enter into the picture when the second proviso to Article 311(2) comes into play and the same would be the position in the case of a service rule reproducing the second proviso in whole or in part and whether the language used is identical with that used in the second proviso or not. There are a number of orders which are of necessity passed without hearing the party who may be affected by them. For instance, courts of law can and often do pass ex parte ad interim orders on the application of a plaintiff, petitioner or appellant without issuing any notice to the other side or hearing him. Can it, therefore, be contended that the judge or judges, as the case may be, did not apply his or their mind while passing such an order?

The decision in *Challappan case*[1] is, therefore, not correct with respect to the interpretation placed by it upon Rule 14 of the Railway Servants Rules and particularly upon the word "consider" occurring in the last part of that rule and in interpreting Rule 14 by itself and not in conjunction with the second proviso to Article 311(2). Before parting with *Challappan case*[1], we may, also point out that that case never held the field. The judgment in that case was delivered on September 15, 1975, and it was reported in (1976) 1 SCR at pages 783 ff[*]. Hardly was that case reported then in the next group of appeals in which the same question was raised, namely, the three civil appeals mentioned earlier, an order of reference to a larger Bench was made on November 18, 1976. The correctness of *Challappan case*[1] was, therefore, doubted from the very beginning.

Not much remains to be said about clause (*a*) of the second proviso to Article 311(2). **To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in *Challappan case*[1]. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of**

the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. **Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in *Shankar Dass* v. *Union of India*[464] this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages.** It is, however, not necessary that the court should always order reinstatement. The court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case……." (emphasis supplied)

The Constitution bench in **Tulsiram Patel**[4] held that the decision in **Chellappan**[3], on the interpretation placed by it on Rule 14 of the Railway Servants (Discipline and Appeal) Rules 1968, particularly on the word "consider" occurring in the last part of that Rule, was not correct. In view of the law laid down, by the Constitution bench of the Supreme Court, in **Tulsiram Patel**[4], the Disciplinary Authority, on the conviction of a government servant on a criminal charge, must peruse the judgment of the criminal Court, consider all the facts and circumstances of the case and the various factors set out in **Chellappan**[3]. The conclusion which the Disciplinary Authority is required to arrive at must be done Ex-parte, by itself, and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso to Article 311(2) of the Constitution of India. While bearing in mind

that a conviction, on a criminal charge, does not automatically entail dismissal/removal/reduction in rank of the concerned government servant, the Disciplinary Authority must arrive at a conclusion as to whether the conduct of the government servant, which led to his conviction on a criminal charge, was such as to warrant imposition of a penalty and if so what that penalty should be. Once the Disciplinary Authority is satisfied that a penalty is to be imposed, he is then required to arrive at a conclusion as to the nature of the penalty to be imposed which would include the penalties of dismissal/removal/reduction in rank. Having decided, which of the penalties is required to be imposed, the Disciplinary Authority should pass the requisite order. Neither is the government servant entitled to be put on notice nor is he required to be given an opportunity of being heard. The proceedings before the Disciplinary Authority, while exercising discretion under clause (a) of the second proviso to Article 311(2) of the Constitution of India and under Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991, are **"ex-parte"**.

W.P. No. 10515 of 2005, on which reliance has been placed by the Tribunal in granting interim stay/suspension of the order of dismissal, was filed by an Assistant Sub-Inspector of Police against the order of the Tribunal in O.A. No. 1166 of 2005 dated 20.04.2005 wherein the Tribunal had refused to suspend the dismissal order dated 04.03.2005 passed against the petitioner. The order of dismissal dated 04.03.2005 was passed pursuant to the conviction recorded by the Special Court for SPE and ACB cases in C.C. No. 12 of 1993 dated 21.10.2003. Against the judgment, of the Special Court, the petitioner had filed Criminal

Appeal No. 1143 of 2003 which was pending. The Division bench, in its order in W.P. No. 10515 of 2005 dated 29.04.2005, held that the petitioner was not given any show cause notice before invoking Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991, that in several cases the Tribunal had granted interim stay of the order of dismissal and that the Tribunal, for the sake of consistency, ought to have followed its own orders passed in similar and identical cases. While directing the Tribunal to dispose of the O.A. expeditiously the Division bench disposed of the writ petition directing that pending disposal of the O.A. the order of dismissal dated 04.03.2005 shall stand suspended.

It is necessary to note that the Constitution Bench judgment of the Supreme Court in **Tulsiram Patel**[4] was not brought to the notice of the Division bench in W.P. No. 10515 of 2005. Since the Supreme Court, in **Tulsiram Patel**[4], has held that the proceedings under the second proviso to Article 311(2) and Rule 19 of the C.C.S (C.C&A) Rules, (which rule is in pari materia with Rule 25 of the A.P.C.S (C.C&A) Rules, 1991), are ex-parte proceedings and that the delinquent employee is not entitled to an opportunity of being heard, the order of the Division bench in W.P. No. 10515 of 2005 dated 29.04.2005, requiring a show cause notice to be issued, is not good law.

The interpretation, to be placed on the second proviso to Article 311(2) of the Constitution of India, and on a rule similar to Rule 25(i) of the A.P.C.S. (C.C&A) Rules, 1991, has been settled by the Constitution Bench of the Supreme Court in **Tulsisram Patel**[4] and, under Article 141 of the Constitution of India, that interpretation is binding on all Courts within the territory of India. All that remains

to be done by the High Court is only to apply that interpretation to the facts before it. (**State of Jammu & Kashmir Vs. Thakur Ganga Singh for Self and on behalf of other Shareholders of M/s Jammu and Kashmir Mechanics and Transport Workers Cooperative Society Limited**[20]). I n **Nirmal Jeet Kaur Vs. State of M.P**[21], the Supreme Court referred with approval to the observations, in **Young Vs. Bristol Aeroplane Co. Ltd**[22], that the "quotable in law", is avoided if it is rendered in ignorance of binding authority. A similar view has been taken by the Supreme Court in **State of U.P. Vs. Synthetics and Chemicals Ltd**[23] and **Punjab Land Development and Reclamation Corporation Ltd Vs. Presiding Officer**[24]. The law declared by the Supreme Court binds Courts in India (**Rajeswar Prasad Misra Vs. State of W.B**[25]). It is the duty of the High Court, whatever be its view, to act in accordance with Article 141 of the Constitution of India and to apply the law laid down by the Supreme Court. Judicial discipline to abide by the declaration of law, of the Supreme Court, cannot be forsaken by any Court, be it even the highest Court in a State, oblivious of Article 141 of the Constitution of India. (**Chandra Prakash Vs. State of UP**[26]; **State of Punjab Vs. Bhag Singh**[27]; and **State of Orissa Vs. Dhaniram Luhar**[28]).

The decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of

utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. (**Chandra Prakash**[26]).

In **Director of Settlements, A.P. Vs. M.R. Apparao**[29] the Supreme Court observed:

"…..**Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India**. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. **The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case**. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani* v. *Municipal Committee, Malkapur:* AIR 1970 SC 1002 and AIR 1973 SC 794AIR 1973 SC 794). **When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh* v. *Surjit Singh:* (**1984)2 SCC 402) **and** ***Kausalya Devi Bogra* v. *Land Acquisition Officer:*** (1984) 2 SCC 324) (emphasis supplied)

Reliance placed on the judgment of the Division bench of

this Court in W.P. No. 10515 of 2005 dated 29.04.2005, to contend that the delinquent employee is entitled to be put on notice before the Disciplinary exercises its discretion to pass an order under Rule 25(i), is therefore misplaced.

In **Ram Chander[19]**, the Supreme Court observed:-

"…….It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in *Tulsiram Patel case*[6] unequivocally lays down that the only stage at which a government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is net worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-second Amendment as interpreted by the majority in *Tulsiram Patel case*[6] that the appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given……."

It is true that the Constitution Bench judgment in **Tulsiram Patel[4]** was considered by the latter two judge bench in **Ram Chander[19]**. In **Ram Chander[19]**, the Supreme Court held that the appellate authority, in the appeal preferred against the punishment imposed consequent upon the conviction in a criminal case, must not only give a hearing to the government servant but must also pass a reasoned order. The opportunity of hearing, in view of the law laid down by the Supreme Court in **Ram Chander[19]**, is at the

appellate stage, on an appeal being preferred against the order passed by the Disciplinary Authority under Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991, and not prior thereto.

Sri P.V. Ramana, learned Counsel, would however contend that, in view of the subsequent Constitution bench judgment of the Supreme Court, in **B. Karunakar**[5], the government servant was entitled to an opportunity of being heard before an order is passed by the Disciplinary Authority under Rule 25(i) and that the earlier judgment in **Tulsiram Patel**[4] is no longer good law. We are afraid we cannot agree. In **B. Karunakar**[5], the Supreme Court held that, when the enquiry officer is not the Disciplinary Authority, the delinquent employee has the right to receive a copy of the enquiry officer's report before the Disciplinary Authority arrives at its conclusions with regard to the guilt or innocence of the employee on the charges levelled against him, that this right was a part of the employee's right to defend himself against the charges levelled against him, that a denial of the enquiry officer's report, before the Disciplinary Authority takes a decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is in breach of the principles of natural justice.

Article 311(2) of the Constitution of India prohibits a government servant from being dismissed or removed or reduced in rank except upon an enquiry being held in which he is informed of the charges leveled against him and is given a reasonable opportunity of being heard in respect of those charges. Under the first proviso to Article 311(2) where it is proposed, after such enquiry, to impose upon that person any penalty, such penalty may be imposed on the basis of the evidence adduced during such

inquiry and it shall not be necessary to give such person an opportunity of making representation on the penalty proposed. The scope of Article 311(2) of the Constitution of India, and the first proviso thereunder, fell for consideration in **B. Karunakar**[5] and it was held that, since the enquiry officer's report is a material document on which the Disciplinary Authority places reliance, the delinquent employee must be given an opportunity to submit his objections to the findings of the enquiry officer in the said inquiry report.

Neither the second proviso to Article 311(2) nor the exclusionary clauses thereunder, were in issue in **B. Karunakar**[5]. In fact, the Supreme Court in **B. Karunakar**[5], while distinguishing the earlier judgment in **Tulsiram Patel**[4], held:-

> "….. **In *Union of India* v. *Tulsiram Patel* this Court had specifically to consider the legal position arising out of the Forty-second Amendment of the Constitution by which Clause (2) of Article 311 was amended and the part of the said clause, viz., "and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry" was deleted. In that decision, this Court has not dealt with the procedure to be followed by the disciplinary authority after the enquiry officer's report is received by it. The question whether the delinquent employee should be heard by the disciplinary authority to prove his innocence of the charges levelled against him when they are held to have been proved by the enquiry officer, although he need not be heard on the question of the proposed penalty, was neither raised nor answered.** This decision, therefore, is not helpful for deciding the said question….." (emphasis supplied)

In the present batch of cases, the scope of the second proviso to Article 311(2), the exclusionary clauses thereunder, and the ambit of Rule 25(i) of the A.P.C.S (C.C&A) Rules, 1991, arise for consideration. Neither clause(a) of the second proviso to Article 311(2) of the Constitution of India nor Rule 25(i) of the

A.P.C.S (C.C&A) Rules, 1991 require an enquiry to be held for imposition of a penalty, on the government servant, on the ground of the conduct which led to his conviction on a criminal charge. The judgment in **B. Karunakar**[5] has, therefore, no application and it is the law laid down by the Constitution bench of the Supreme Court, in **Tulsiram Patel**[4], which is required to be followed in these batch of cases.

W.P. No. 16322 of 2006 has been filed against the order of the Tribunal in O.A. No. 3425 of 2006 dated 21.06.2006 wherein the Tribunal had directed the petitioners herein to continue the 1st respondent-applicant under suspension pending disposal of the Criminal Appeal. The 1st respondent-applicant had filed O.A. No. 3425 of 2006 apprehending that he would be dismissed from service and had sought for a direction that he be continued in service. Since the relief sought for by him was not granted and the Tribunal had, instead, directed that he be kept under suspension, the 1st respondent-applicant filed W.P. No. 13225 of 2006 which was dismissed at the stage of admission by order dated 03.07.2006. The order of this Court, in refusing to entertain the writ petition filed by the delinquent employee against the order of the Tribunal directing that he be continued under suspension, only means that this Court was not inclined to grant him the relief of reinstatement which he had sought for. In the writ petition filed by an employee against the order of the Tribunal, on the ground that he was denied relief in part, this Court could not have set aside the relief granted by the Tribunal in his favour. The order of this Court, in W.P. No. 13225 of 2006 dated 03.07.2006, does not preclude the petitioners herein, who were aggrieved by the order of

the Tribunal in directing that the 1st respondent be continued under suspension, from approaching this Court by way of the present writ petition. While it is true that this Court had relied on the judgment of the Supreme Court in **Chandrabhan[1]**, the fact, that in the subsequent judgment of the Supreme Court in **Ramesh Kumar[8]** the earlier judgment in **Chandrabhan[1]** was distinguished, was not brought to the notice of this Court in W.P. No. 13225 of 2006. Reliance placed by the 1st respondent, on the judgment of this Court in W.P. No. 13225 of 2006 dated 03.07.2006 is, therefore, of no avail.

Before parting with these batch of cases, we must record our concern regarding the interlocutory orders being passed by the Tribunal, in these matters, without considering the adverse consequences which such orders may have on public administration. The Tribunal ought not, as a matter of course, grant interim stay of the orders of dismissal, or for that matter any other penalty imposed by the Disciplinary Authority under Rule 25(1) of the A.P.C.S (C.C&A) Rules. Directing a government servant to be continued in service, pending disposal of the O.A, though the order of dismissal/removal/compulsory retirement was passed on his conviction on a criminal charge of corruption, misappropriation or of such similar acts, is against larger public interest. While the damage suffered by the delinquent government servant can be adequately compensated later, when final orders are passed setting aside an illegal order of dismissal, an interim order, pending disposal of the O.A, directing that such a government servant be continued in service would seriously impair the integrity and efficiency of Public Service and demoralize other

honest government servants. The incalculable harm which such orders can cause, if eventually the O.A. was to be dismissed, cannot be over-emphasized. The Tribunal must exercise caution while passing interlocutory orders of this nature.

W.P. Nos. 13421 of 2006, 7829 of 2006 and 16322 of 2006 are allowed and the order of the Tribunal in O.A. No. 2414 of 2006 dated 27.04.2006, O.A. No. 642 of 2005 dated 07.02.2005 and O.A. No. 3425 of 2006 dated 21.06.2006 are set aside. W.P. No. 16217 of 2006 is dismissed and the order of the Tribunal in O.A. NO. 3773 of 2005 dated 27.04.2006 is upheld. Since the Tribunal, by its order in O.A. No.2414 of 2006 dated 27.04.2006, had directed the petitioners herein not to dismiss the respondent-applicant from service, on the order of the Tribunal now being set aside, it would be open to the petitioners herein to take action against the respondent-applicant in accordance with law and in terms of what has been laid down in this judgment. O.A. No. 642 of 2005 was filed to quash the order dated 28.02.2005 dismissing the respondent-applicant from service. Since the interim order of the Tribunal, in suspending the order dated 28.02.2005, is now set aside, the order of dismissal dated 28.02.2005 shall come into force. It shall, however, be subject to the final orders to be passed by the Tribunal in O.A. No. 642 of 2005. No costs.

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B.PRAKASH RAO, J

Date: .09.2006

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RAMESH RANGANATHAN, J

Note: L.R. copy to be marked

B/o

MRKR

[1] 1983(2) SLR 493

[2] 2001 AIR SCW 3339

[3] 1975 SC 2216

[4] AIR 1985 SC 1416

[5] 1993(4) SCC 727

[6] AIR 1986 SC 1173

[7] AIR 1985 SC 772

[8] 1997(5) Scale 660

[9] AIR 1995 SC 1364

[10] AIR 1991 SC 772

[11] AIR 1984 SC 1587

[12] 2005(7) SCC 567

[13] AIR 1990 SC 166

[14] 2004(12) SCC 588

[15] AIR 1966 SC 1942

[16] 2001(4) SCC 448

[17] 2002(4) SCC 578

[18] 1993(3) ALT 471 (FB)

[19] (1986) 3 SCC 103

[20] AIR 1960 SC 356

[21] (2004(7) SCC 558

[22] (1944) 2 All ER 293

[23] (1991) 4 SCC 139

[24] (1990) 3 SCC 682

[25] AIR 1965 SC 1887

[26] (2002) 4 SCC 234

[27] 2004(1) SCC 547

[28] (2004)5 SCC 568

[29] (2002)4 SCC 638